APPEAL NO. 030470
FILED APRIL 16, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on February 4, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____, and that she did not have disability. The claimant appealed and the respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

First, we address the claimant's evidentiary objections. The claimant asserts that the hearing officer erred in admitting one of the carrier's exhibits, which was offered to show that the claimant was not at work on the date of the claimed injury. The claimant argues that she was not given an opportunity to object to the complained-of exhibit, and that she had no notice that the carrier was going to raise the defense that the claimant was not at work on the date in question. To obtain a reversal on the basis of admission or exclusion of evidence, it must be shown that the ruling admitting or excluding the evidence was error and that error was reasonably calculated to cause and probably did cause rendition of an improper judgment. Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). It has also been stated that reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). The claimant did not object to the complained-of exhibit, or to the carrier's position that the claimant was not at work on the date in question, at the hearing and has therefore waived those objections on appeal. Our review of the record shows that the attorney for the carrier specifically questioned the claimant about the complained-of exhibit with no objection from the claimant.

The claimant had the burden to prove that she was injured in the course and scope of her employment. There is conflicting evidence in this case. The 1989 Act makes the hearing officer the sole judge of the weight and credibility to be given to the evidence. Section 410.165(a). The finder of fact may believe that the claimant has an injury, but disbelieve that the injury occurred at work as claimed. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). An appellate body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its judgment for that of the trier of fact, even if the evidence would support a different result. Texas Worker's Compensation Commission Appeal No. 950084, decided February 28, 1995. Our review of the record reveals that the hearing officer's injury determination is supported by sufficient evidence and that it is not so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. Thus, no sound basis exists for us to disturb the determination that the claimant did not

sustain a compensable injury on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Given our affirmance of the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **U.S. SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

BENJAMIN WILCOX
13403 NORTHWEST FREEWAY
HOUSTON, TEXAS 77040.

_____
Daniel R. Barry
Appeals Judge

CONCUR:

_____
Elaine M. Chaney
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge